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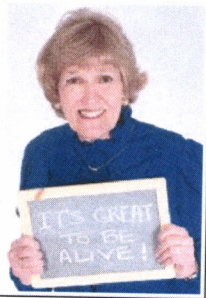
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Jeanette Hall, 12 years after her doctor talked her out of physician-assisted suicide in Oregon - Click photo to read her story

Voices From Oregon and Washington Where Assisted Suicide is Legal

- "I was afraid to leave my husband alone"
- "This is how society will pay you back? With non-voluntary or involuntary euthanasia?"
- "If Dr. Stevens had believed in assisted suicide, I would be dead"
- "It wasn't the father saying that he wanted to die"
- "He made the mistake of asking about assisted suicide"

Law Enforcement Viewpoint Against Assisted Suicide

## A Short History of Assisted Suicide in Montana

By Margaret Dore, Esq., MBA  
Updated July 10, 2014

Assisted suicide means that someone provides the means and/or information for another person to commit suicide. When a physician is involved, the practice is physician-assisted suicide.

### A. Assisted Suicide

In 1895, the Montana Legislature enacted a criminal statute prohibiting assisted suicide as a "crime against the public safety." [1] In 1907, 1921 and 1947, this statute was re-codified, but its text remained unchanged. [2] The statute stated: "Every person who deliberately aids, or advises or encourages another to commit suicide is guilty of a felony." [3]

### B. The Constitutional Convention

In 1972, Montana held its constitutional convention. At that time, the convention's Bill of Rights Committee considered and rejected a proposed "right to die." [4] The testimony supporting this proposal had included an argument to allow physician-assisted suicide in the case of a painful death. [5]

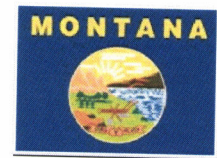
On June 6, 1972, the new Montana State Constitution was ratified by the people without the proposed right to die. [6] This is the present Constitution of the State of Montana. [7]

### C. A New Criminal Code

In 1973, the Legislature enacted a new criminal code drafted by the Criminal Law Commission. The new Code moved the prohibition against aiding a suicide to the homicide statutes. [8] If the suicide occurred, the offense would be homicide. [9] If the suicide did not occur, the offense would be "aiding or soliciting suicide." [10] The Criminal Law Commission Comments stated that a victim's consent was not a defense, as follows:

"If the conduct of the offender made him the agent of the death, the offense is criminal homicide, notwithstanding the

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#### WHY WE CARE

To learn more about problems with legal assisted suicide, go to [Quick Facts About Assisted Suicide](#).

Some healthcare providers already misuse and/or abuse palliative care. If assisted suicide is made legal, providers will have even more power to abuse patients and/or take away patient choice. To learn more, [click here](#).

Choice is an Illusion

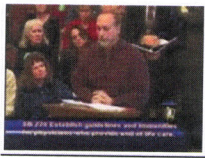


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Print our handouts!

- "Aid in Dying" Whose Choice?
- Why do so many disability groups oppose assisted suicide?
- US Overview (Idaho article)
- Terminal

EXHIBIT 4  
DATE 2/16/15  
HB 477



Philip Tummarello,  
retired Sergeant  
Inspector - click on  
photo to see video

#### Assisted Suicide is Not Legal in Montana

- [Fight over assisted suicide moves back to court](#)
- [Legal analysis of failed bill to legalize assisted suicide in Montana](#)
- [Assisted suicide is still not legal](#)
- [Charlton letter to physicians](#)
- [A Short History of Assisted Suicide in Montana](#)
- ["If \[Kress\] is convicted, it will be under Baxter, not HB 505"](#)
- ["Kress claims that his patients were not depressed. His description of one of those patients, however, suggests otherwise."](#)
- ["If Kress had been my doctor in 2000, I would be dead."](#)

#### Bradley Williams Speaks Against Assisted Suicide



Click on photo to watch  
Bradley Williams speak  
against assisted suicide

#### Blog Archive

- ▼ [2015 \(2\)](#)
  - ▼ [February \(2\)](#)
    - [SB 202 Tabled in Committee!](#)
    - [Defeat SB 202!](#)
- [2014 \(22\)](#)
- [2013 \(79\)](#)
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## Montanans Against Assisted Suicide: A Short History of Assisted Suicide in Montana

consent or even the solicitations of the victim." (Emphasis added).[11]

The new Code did not, however, provide this clarifying information in the statutes themselves. In 1981, the Legislature added a monetary penalty.[12]

### D. Civil Liability

In 1989, the Supreme Court of Montana issued *Krieg v. Massey*, describing that civil liability can be imposed against a person who causes or fails to prevent another person's suicide.[13]

### E. *Baxter v. State*

On December 8, 2008, a district court judge issued a decision holding that there is a right to physician-assisted suicide under the Montana State Constitution.[14] On December 31, 2009, the Supreme Court of Montana vacated that decision in *Baxter v. State*.[15] The vote to vacate was six justices to one.[16]

In *Baxter*, the Supreme Court also held that a patient's consent to assisted suicide is a defense to a homicide charge against an assisting physician.[17] When making this holding, the Court said that it was not bound by the Criminal Law Commission Comments, providing that a victim cannot consent, because the language of the Comments did not appear in the statutes themselves.[18]

The Court's decision was also based on a determination that assisted suicide is not against Montana public policy.[19] The Court, however, overlooked elder abuse. *Baxter* states that the only person "who might conceivably be prosecuted for criminal behavior is the physician who prescribes a lethal dose of medication." [20] *Baxter* thereby overlooked criminal behavior by family members and others who benefit from a patient's death, for example, due to an inheritance. The Court thereby overlooked Montana's explicit public policy to prevent elder abuse.[21] The Court also overlooked *Krieg v. Massey* describing that civil liability can be imposed against a person who causes or fails to prevent another person's suicide.[22] Indeed, the Court completely overlooked civil liability.[23]

### F. Not Legal

*Baxter* did not legalize assisted suicide.[24] The decision is, however, confusing. This has allowed suicide proponents to claim that physician-assisted suicide is legal in Montana.

### G. The 2013 Legislative Session: *Baxter* remains in place

In 2013, the legislative session featured two bills on assisted suicide: HB 505 sought to reverse *Baxter's* holding; SB 220 sought to legalize assisted suicide.

HB 505 passed the House, but then died on the Senate floor. SB 220, by contrast, was tabled in Committee. With the failure of both bills, *Baxter* remains in place.

### Footnotes:

- [1] Section 698, Pen. C. 1895.  
 [2] In 1907, § 698, Pen. C. 1895 was reenacted as § 8529, Rev. C. 1907. In 1921, the statute was reenacted as § 11261, R.C.M. In 1947, the statute was reenacted as § 94-

### Uncertainty

- [Laws Against Assisted Suicide are Constitutional](#)
- [What People Mean When They Say They Want to Die](#)

#### Senator Shockley speaks against assisted suicide; warns of abuse by heirs



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video

#### A Recipe for Elder Abuse



Julie's Sign: No  
assisted suicide. No  
assisted elder abuse.  
Preserve choice for  
seniors.

#### Labels

- [aid in dying \(50\)](#)
- [American Medical Association \(5\)](#)
- [assisted suicide \(109\)](#)
- [Barbara Coombs Lee \(6\)](#)
- [Barbara Wagner \(8\)](#)
- [Baxter \(36\)](#)
- [Blewett \(16\)](#)
- [Bradley Williams \(38\)](#)
- [Carol Mungus \(2\)](#)
- [Charles Bentz MD \(4\)](#)
- [Choice is an Illusion \(2\)](#)
- [Compassion and Choices \(14\)](#)
- [Constitutional Right \(1\)](#)
- [contagion \(2\)](#)
- [Cory Swanson \(1\)](#)
- [Craig Charlton \(6\)](#)
- [David Hafer \(3\)](#)
- [death with dignity \(21\)](#)
- [dehydration \(2\)](#)
- [depression \(7\)](#)
- [Derek Humphry \(2\)](#)
- [Diabetes \(1\)](#)
- [disability \(8\)](#)
- [doctors wrong \(1\)](#)
- [Elder abuse \(57\)](#)
- [Eric Kress \(4\)](#)



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## Montanans Against Assisted Suicide: A Short History of Assisted Suicide in Montana

35-215.

[3] *Id.*

[4] See Margaret Dore, "Montana Constitution Does Not Include a 'Right to Die,'" *Montanans Against Assisted Suicide*, updated January 20, 2013, at

[www.montanansagainstassistedsuicide.org/p/no-right-to-die.html](http://www.montanansagainstassistedsuicide.org/p/no-right-to-die.html)

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] See Table of Contents at

[http://data.opi.mt.gov/bills/mca\\_toc/45\\_5\\_1.htm](http://data.opi.mt.gov/bills/mca_toc/45_5_1.htm)

[9] See Montana Legislative Services Division, 2012 Annotations to the Montana Code Annotated, p. 271 (Annotator's Note regarding 45-5-105, MCA).

[10] 45-5-105(1), MCA.

[11] Criminal Law Commission Comments regarding 45-5-105, MCA.

[12] See 45-5-105(2).

[13] *Krieg*, 239 Mont. 469, 472-3 (1989) states: "The general rule . . . is that '[n]egligence actions for the suicide of another will generally not lie since the act or suicide is considered a deliberate intervening act exonerating the defendant from legal responsibility . . .'. There are two . . . exceptions to this rule. The first exception deals with causing another to commit suicide . . . The second exception allows the imposition of a duty to prevent suicide but only in a custodial situation where suicide is foreseeable. These situations typically involve hospitals or prisons."

[14] *Baxter v. State*, 354 Mont. 234, ¶¶ 7 & 9, 224 P.3d 1211, 2009 MT 449.

[15] *Id.*, ¶ 51.

[16] In *Baxter*, Justice James Nelson, specially concurring, was the only justice who voted to affirm a constitutional right to physician-assisted suicide under the Montana State Constitution. See his concurrence beginning at ¶ 64. The majority opinion issued by Justice William Leahart vacated the district court's constitutional ruling at ¶ 51 ("The District Court's ruling on the constitutional issues is vacated . . .") Leahart was joined by Justices Patricia O. Cotter, John Warner and Brian Morris. Warner's concurrence, ¶ 54, states "This Court correctly avoided the constitutional issue . . ." The dissent by Justice Jim Rice, joined by Joe L. Hegel, would have gone farther to state that there is no constitutional right to assisted suicide under the Montana State Constitution. See ¶¶ 111-116.

[17] *Baxter*, 354 Mont. at 251, ¶ 50, states: "We . . . hold that under § 45-2-211, MCA, 'a terminally ill patient's consent to physician aid in dying constitutes a statutory defense to a charge of homicide against the aiding physician when no other consent exceptions apply.'"

[18] The Court stated: "[T]he comments analyze language, such as 'agent of death,' that does not even appear in the aid or soliciting statute or anywhere else in the Montana code." *Baxter*, 354 Mont. at 249, ¶ 42.

[19] *Baxter*, 354 Mont. at 250, ¶ 49.

[20] *Baxter*, 354 Mont. at 239, ¶ 11.

[21] See e.g., the Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-801, MCA; the Protective Services Act for Aged Persons or Disabled Adults, 52-3-201, MCA; and the "Montana Older Americans Act," 52-3-501, et. al., MCA.

[22] See *Baxter* in its entirety.

[23] *Id.*

[24] Attorneys Greg Jackson and Matt Bowman state: "[T]he Court's narrow decision didn't even 'legalize' assisted suicide. . . . After *Baxter*, assisted suicide continues to carry

- [Essmann](#) (3)
- [euthanasia](#) (17)
- [FBI](#) (1)
- [Gabor Benda](#) (1)
- [George Risi](#) (1)
- [Georgia](#) (1)
- [Glucksberg](#) (1)
- [Greg Hinkle](#) (5)
- [Greg Jackson](#) (16)
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- [HB 505](#) (39)
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- [hospice abuse](#) (1)
- [Idaho](#) (1)
- [Jeanette Hall](#) (11)
- [Jerry Large](#) (1)
- [Kate Kelly](#) (2)
- [Ken Stevens MD](#) (11)
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- [SB 220](#) (3)
- [Senator Greg Hinkle](#)



“If my doctor had believed  
in assisted suicide, I would  
be dead.”

*Jeanette Hall*  
King City, Oregon



# RAVALLI REPUBLIC

## Assisted suicide prompts some terminally ill patients to give up on life prematurely

NOVEMBER 28, 2012

Thank you for publishing the letter by Dr. Ken Stevens describing how he talked his patient out of doing assisted suicide in Oregon (Missoulain, online only). I am that patient and he did save my life.

In 1997, I voted for the initiative that legalized assisted suicide in Oregon.

In 2000, I was diagnosed with cancer and told that I had six months to a year to live. I knew that our law had passed, but I didn't know exactly how to go about doing it. I did not want to suffer, and I did not want to do radiation. I wanted Stevens to help me, but he didn't really answer me.

Instead, he encouraged me to not give up and ultimately I decided to fight the cancer. I had both chemotherapy and radiation. I am so happy to be alive!

It is now 12 years later. If Stevens had believed in assisted suicide, I would be dead. I thank him and all my doctors for helping me choose "life with dignity." Assisted suicide should not be legal.

Thank you so much.

*Jeanette Hall,  
King City, Oregon*



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